



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MAY 16, 2023

IN THE MATTER OF:

Appeal Board No. 628376

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance on behalf of the employer. By decision filed February 21, 2023 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as an assistant store manager by the employer, a retail business, from October 28, 2020 through September 14, 2022.

The employer's policy indicated a store manager could not perform bulk sales of over five items without the approval of a district manager or vice-president. Otherwise, the employee's actions could lead to disciplinary

action including discharge. The policy was enforced with all employees. The District Sales Manager (RD) reviewed the policy with the claimant on numerous conference calls and had advised her that a violation of the bulk sales policy could result in discharge.

A store associate reported the bulk sale policy was being violated at her store and the employer sent an investigator to the store.

On September 9, 2022, the investigator and RD watched surveillance video and observed the claimant violating the employer's bulk sales policy. The investigator spoke with the claimant. The claimant wrote a statement in which she admitted that she had violated the employer's bulk sales policy at least twenty times and that she had received Starbucks and lunches from customers in exchange for violating the policy.

On September 14, 2022, the employer discharged the claimant for violating its bulk sales policy.

OPINION: The credible evidence establishes that the employer discharged the claimant for violating its bulk sales policy. Significantly, RD and the investigator viewed the claimant violating its policy on the surveillance footage and the claimant admitted in her statement that she did so at least twenty times in exchange for free lunches and Starbucks from customers. As the District Sales Manager had advised her through numerous conference calls that a violation of the bulk sales policy could result in her discharge, the claimant was aware that her actions would place her job in jeopardy. Accordingly, the claimant's repeated violation of the employer's policy in exchange for lunches and Starbucks is misconduct for unemployment purposes.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is sustained, effective September 15, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is disqualified from receiving benefits, effective September 15, 2022, until the claimant has subsequently worked in employment and earned remuneration at least equal to 10 times the claimant's weekly benefit rate. Employment and earnings from non-covered, excluded or self-employment will not count.

The claimant is denied benefits with respect to the issue decided herein.

MICHAEL T. GREASON, MEMBER